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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,613	11/21/2003	Jason Matthew English	KCC 4947 (K-C 18, 027)	3131
321	7590	03/28/2007	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	
			NOTIFICATION DATE	DELIVERY MODE
			03/28/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/719,613

Applicant(s)

ENGLISH ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

**TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER**



MGB

Continuation of 11. does NOT place the application in condition for allowance because: Applicants requested that the Examiner clarify the characterization of the performance test characteristic limitations. This was put forth to indicate how these limitations were interpreted, it is not otherwise material to the rejections for optimization. Applicants assert that Bewick teaches using a greater superabsorbent concentration that would be greater than that which is claimed. This argument is not persuasive because looking at the references as a whole, one of ordinary skill in the art would see the benefit of maximizing capacity within obvious constraints such as the size, thickness, weight, flexibility as well as competing performance vectors. These concerns are directly related to how comfortable and practical the article is during use. Maximizing the performance capacity within such constraints is optimization of the capacity. Applicants assert that it also would not have been obvious to one skilled in the art to modify the absorbent core of Bewick to have the recited saturation capacity and the recited retention capacity. This argument is not persuasive because the benefits of optimizing saturation capacity is taught by Dulle, which teaches that maximizing saturation capacity of an absorbent article aids in preventing the article from exceeding that capacity, beyond which it can not absorb more fluid (col. 2, lines 37-59). The benefits of optimizing retention capacity is taught by Brandt, which teaches that maximizing the total fluid capacity of an absorbent article is desirable (col. 1, lines 38-55). The benefits of optimizing intake and rewet time is taught by Zelazoski, which teaches that minimizing the amount of time for a material to uptake fluids and to minimize any rewetting is desirable (col. 19, lines 1-43). These secondary references show that was known to be desirable to optimize these parameters, making the claimed values result-effective variables. One of ordinary skill in the art would have recognized that increasing capacity and/or retention, intake time and rewet performance would allow the absorbent article to larger fluid insults or fluid insults of longer duration and avoidance of rewet when the article is in use. Applicants assert that the claimed absorbent article is not constructed to maximize each of the performance test vectors. Again, this argument is not persuasive because looking at the references as a whole, one of ordinary skill in the art would see the benefit of maximizing capacity within obvious constraints such as the size, thickness, weight, flexibility as well as competing performance vectors. Applicants assert that Bewick fails to disclose an intake time as claimed. This argument is not persuasive because the benefits of optimizing intake and rewet time is taught by Zelazoski, which teaches that minimizing the amount of time for a material to uptake fluids and to minimize any rewetting is desirable (col. 19, lines 1-43). These secondary references show that was known to be desirable to optimize these parameters, making the claimed values result-effective variables. One of ordinary skill in the art would have recognized that increasing capacity and/or retention, intake time and rewet performance would allow the absorbent article to larger fluid insults or fluid insults of longer duration and avoidance of rewet when the article is in use.